

Joel Koskan / 70571
Name and Prisoner/Booking Number

Mike Duffee State Prison
Place of Confinement

1412 Wood Street
Mailing Address

Springfield, SD 57062
City, State, Zip Code

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
Southern DIVISION

Joel Koskan,
(Full Name of Plaintiff)

Case No. 24-4006
(To be supplied by the Clerk)

Plaintiff,

vs.

**CIVIL RIGHTS COMPLAINT
BY A PRISONER**

- 1 Kellie Wasko
- 2 Brent Fluke
- 3 Alejandro Reyes
- 4 UNKNOWN Department of Corrections Policy
(Full Name of Each Defendant) Board members
- 5 South Dakota Legislature
Defendants.

- ☒ Original Complaint
☐ First Amended Complaint
☐ Second Amended Complaint

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:
 - a. ☒ 28 U.S.C. § 1343(a)(3); 42 U.S.C. § 1983
 - b. ☐ 28 U.S.C. § 1331; *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).
 - c. ☐ Other: (Please specify.) _____

2. Name of Plaintiff: Joel Koskan
Present mailing address: 1412 Wood St Springfield, SD 57062
(Failure to notify the Court of any change of address may result in dismissal of this action.)

Institution/city where violation occurred: Mike Duffee State Prison Springfield, SD

3. Name of first Defendant: Kellie Wasko. The first Defendant is employed as:
Secretary of Department of Corrections at State of South DAKOTA.
 (Position and Title) (Institution)

This Defendant is sued in his/her: ☒ individual capacity ☒ official capacity (check one or both)

Explain how this Defendant was acting under color of law: Policy making and enforcement.

4. Name of second Defendant: Brent Fluke. The second Defendant is employed as:
warden at Mike Dufree STATE PRISON.
 (Position and Title) (Institution)

This Defendant is sued in his/her: ☒ individual capacity ☒ official capacity (check one or both)

Explain how this Defendant was acting under color of law: Policy making and enforcement.

5. Name of third Defendant: Alejandro Reyes. The third Defendant is employed as:
Associate WARDEN at Mike Dufree STATE PRISON.
 (Position and Title) (Institution)

This Defendant is sued in his/her: ☒ individual capacity ☒ official capacity (check one or both)

Explain how this Defendant was acting under color of law: Policy making and enforcement.

6. Name of fourth Defendant: UNKNOWN Department of correction Policy Board members. The fourth Defendant is employed as:
Board members at South Dakota Department of corrections.
 (Position and Title) (Institution)

This Defendant is sued in his/her: ☒ individual capacity ☒ official capacity (check one or both)

Explain how this Defendant was acting under color of law: Policy making for prisons.

(If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.)

B. PREVIOUS LAWSUITS

- Have you filed any other lawsuits while you were a prisoner? ☐ Yes ☒ No
- If your answer is "yes," how many lawsuits have you filed? _____. Describe the previous lawsuits in the spaces provided below.
- First prior lawsuit:
 - Parties to previous lawsuit:
 Plaintiff: _____

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7. Name of fifth defendant South Dakota Legislators. The Fifth defendant is employed as State Legislators at the State of South Dakota. These defendants are sued in their individual and official capacities. These defendants acted under color of law by making laws that are unconstitutional and violate the equal protection clause.

Defendants: _____

b. Court: (If federal court, identify the district; if state court, identify the county.) _____

c. Case or docket number: _____

d. Claims raised: _____

e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____

f. Approximate date lawsuit was filed: _____

g. Approximate date of disposition: _____

4. Second prior lawsuit:

a. Parties to previous lawsuit:

Plaintiff: _____

Defendants: _____

b. Court: (If federal court, identify the district; if state court, identify the county.) _____

c. Case or docket number: _____

d. Claims raised: _____

e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____

f. Approximate date lawsuit was filed: _____

g. Approximate date of disposition: _____

5. Third prior lawsuit:

a. Parties to previous lawsuit:

Plaintiff: _____

Defendants: _____

b. Court: (If federal court, identify the district; if state court, identify the county.) _____

c. Case or docket number: _____

d. Claims raised: _____

e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____

f. Approximate date lawsuit was filed: _____

g. Approximate date of disposition: _____

(If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.)

C. CAUSE OF ACTION

COUNT I

1. The following constitutional or other federal right has been violated by the Defendant(s): _____

Amendment XIV, Privileges, Equal protection, Due process

2. Count I involves: (Check **only one**; if your claim involves more than one issue, each issued should be stated in a different count)
- | | | |
|--|--|--|
| <input type="checkbox"/> Medical care | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Mail |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Retaliation | <input type="checkbox"/> Exercise of religion |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input checked="" type="checkbox"/> Other: <u>privileges</u> |

3. **Supporting Facts:** (State as briefly as possible the FACTS supporting Count I. Describe exactly what each Defendant did or did not do to violate your rights. State the facts clearly in your own words without citing legal authority or arguments).

South Dakota Department of Corrections discriminates against those identified as sex offenders in their work release policy according to the work release policy if you are non-violent you are eligible for work-release at 18 months till your initial parole date. but the DOC policy bars those identified as sex offenders from that privilege without following state law that allows for all inmates to be evaluated on a case by case situation. I am not able to contribute to my household income and support my wife and children at home. I have no institutional issues whatsoever. I have a mutual-consensual charge and have completed all requirements of my individual program directive and have completed all 5 of my elements

4. **Injury:** (State how you have been injured by the actions or inactions of the Defendant(s)).

I am not able to work to make money to support my wife and children at home and am a drain on the system versus contributing to society and producing.

5. **Administrative Remedies:**

- Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☒ Yes ☐ No
- Did you submit a request for administrative relief on Count I? ☒ Yes ☐ No
- Did you appeal your request for relief on Count I to the highest level? ☒ Yes ☐ No
- If you did not submit or appeal a request for administrative relief to the highest level, briefly explain why you did not. _____

COUNT II

1. The following constitutional or other federal right has been violated by the Defendant(s): _____
I am currently listed on SORNA and should not be
2. Count II involves: (Check **only one**; if your claim involves more than one issue, each issued should be stated in a different count)

<input type="checkbox"/> Medical care	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Mail
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Retaliation	<input type="checkbox"/> Exercise of religion
<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input checked="" type="checkbox"/> Other: <u>Registration Requirement</u>
3. **Supporting Facts:** (State as briefly as possible the FACTS supporting Count II. Describe exactly what each Defendant did or did not do to violate your rights. State the facts clearly in your own words without citing legal authority or arguments).
The South Dakota Department of Corrections currently has me listed on the Sex offender Registration and notification Act website. According to federal law I am not a sex offender and thus should not be listed federally. South Dakota law that I am convicted of requires a mutual consensual adult relationship to occur. Federal law states my offense is not a registerable offense under SORNA.
4. **Injury:** (State how you have been injured by the actions or inactions of the Defendant(s)).
My name and information is incorrectly published on a national database.
5. **Administrative Remedies:**
 - a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☒ No
 - b. Did you submit a request for administrative relief on Count II? ☐ Yes ☒ No
 - c. Did you appeal your request for relief on Count II to the highest level? ☐ Yes ☒ No
 - d. If you did not submit or appeal a request for administrative relief to the highest level, briefly explain why you did not. *I have spoken to Case Manager Luke about this and she says she has no control over it.*

COUNT III

1. The following constitutional or other federal right has been violated by the Defendant(s): The South Dakota legislature has made laws that are unconstitutional.

2. Count III involves: (Check **only one**; if your claim involves more than one issue, each issued should be stated in a different count)
- | | | |
|--|--|---|
| <input type="checkbox"/> Medical care | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Mail |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Retaliation | <input type="checkbox"/> Exercise of religion |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input checked="" type="checkbox"/> Other: <u>State law</u> |

3. **Supporting Facts:** (State as briefly as possible the FACTS supporting Count III. Describe exactly what each Defendant did or did not do to violate your rights. State the facts clearly in your own words without citing legal authority or arguments).

SDCL 22-24B-1 does not specify or differentiate between incest and aggravated incest nor does it indicate which law is included as this every other instance defining what a sex offender is. If you commit incest as a minor you will not be registered as a sex offender but if you commit incest on your 18th birthday you will be forced to register. South Dakota Supreme court (In People in interest of Z.B., 757 N.W. 2d 595) stated "prevention of child sexual abuse is the overarching purpose behind sex offender registration and notification laws". Adult incest in South Dakota requires a mutual consensual adult relationship. Adult incest in South Dakota is more closely aligned with Bigamy which is illegal but does not require registration. SDSP ruled in People in interest of Z.B. that juveniles not afforded the same opportunities as adult offenders violated the equal protection clause. If a minor commits a rape offense in South Dakota, they have to register as a sex offender. Just as a minor doesn't have to register for incest an adult should not have to register either. see attachment →

4. **Injury:** (State how you have been injured by the actions or inactions of the Defendant(s)).

It has caused my time in prison to be harder than that of other class 5 felons. I am not eligible for work release because of unconstitutional DOC policies and I have to register.

5. **Administrative Remedies:**

- Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☒ No
- Did you submit a request for administrative relief on Count III? ☐ Yes ☒ No
- Did you appeal your request for relief on Count III to the highest level? ☐ Yes ☒ No
- If you did not submit or appeal a request for administrative relief to the highest level, briefly explain why you did not. they have no control of the legislature here at MDSP.

(If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.)

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Furthermore, Incest is more similarly situated to Bigamy than to aggravated incest as both bigamy and Incest require consensual relationships that are prohibited by law and not offenses involving minors or forcible acts. Both Bigamy and Incest are considered non-violent low level felonies.

Also, 34 U.S.C.A 20911(5)(c) states “ offenses involving consensual sexual conduct is not a sex offense for the purpose of this subchapter if the victim was an adult....” South Dakota is the only state in the country that requires a mutual consensual adult relationship to be classified as Incest. This law preempts South Dakota’s SDCL 22-24B-1 and is in direct conflict with each other further violating the Supremacy Clause of the U.S. Constitution. In reading of the State’s law it does not differentiate between Incest and Aggravated Incest and to the person of average intelligence would exclude aggravated Incest from the sex offender registry. SDCL 22-24B-1 states “Incest if committed by an Adult” referencing no law as every other offense does. Aggravated incest and incest are fundamentally different as one (aggravated incest) involves minors and is a violent crime and the other (incest) is a mutual consensual act requiring at least two individuals to commit the crime as accomplices.

In 34 U.S.C.A. 20901 the purpose of the SORNA is stated to be “In order to protect the public from Sex offenders and offenders against children, and in response to the vicious attacks by violent predators against the victims listed below....” This is also confirmed by the South Dakota Supreme Court in their ruling of *People in Interest of Z.B.* 757 N.W. 2d 595 2008 where Justice Konenkamp, J for the majority of the court stated “Prevention of child sexual abuse is the overarching purpose behind sex offender registration and notification laws”

Incest involves neither violent acts nor minors in this crime. South Dakota has narrowly defined Incest and Aggravated Incest and in 2005 changed the statute and separated minors out of the Incest statute. Incest is in the subchapter of “Offenses against the Family” formally codified with “Crimes against Public Morals” not even in “Crimes against the Person” Again confirming the non-violent nature that even the Legislature has correctly recognized.

D. REQUEST FOR RELIEF

State briefly what you want the Court to do for you.

Require the South Dakota Department of Corrections to follow the constitution and state laws allowing for all inmates to be assessed on a case by case scenario. All other inmates are allowed the privilege, including violent felons. Require the SDOOC to change their policy and allow what South Dakota law makes available to all inmates available. Also require South Dakota and the Department of Corrections to remove my name and information from SORNA.

As to the legislative unconstitutionality, Remove my name and information from the registry and not require any adult incest offenders to have to register. According to SDC 22-22A-2 there is a mutual consensual relationship that should have no victims. The law requires "Any persons", so 2 or more, to commit the crime as accomplices. According to the law there are no victims and that is further evidenced by the crime being classified as non-violent and not involving minors.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12-18-2023
DATE


SIGNATURE OF PLAINTIFF

(Name and title or paralegal, legal assistant, or other person who helped prepare this complaint)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If needed, you may attach additional pages. The form, however, must be completely filled in to the extent applicable.